

March 2020

Private Foundations Bulletin

Grantmaking During Disasters and Tax-Favored Financial Assistance to Employees

The President declared a national emergency on March 13, 2020 and invoked the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Declaration) in response to the COVID-19 pandemic. Private foundations are once again being called upon to play a critical role in the response, relief and eventual recovery efforts and have traditionally been involved in assisting victims during disasters.

Foundations can play a role by contemplating the following areas outlined in this bulletin:

- Initial points to consider as a funder
- Grants to individuals during a disaster
- Tax-favored assistance to a foundation's own impacted employees
- The Declaration's impact on employer-sponsored private foundations

If your foundation wishes to provide relief to disaster victims and gain an understanding of the changes in existing laws or rules as a result of the Declaration, you may find the following to be of assistance.

Initial Points to Consider

- **Connect with other funders:** Leverage existing relationships with other funders to develop a practical, user-friendly resource that refines information about community needs and grantmaking opportunities. Create a reference that encourages communication among funders.
- **Streamline the application process:** Temporarily modify the grant application process to reduce demands made on nonprofits following a disaster and consider general operating support.
- **Build up local philanthropy:** Use existing relationships and staff connections to develop local philanthropic organizations. Stronger local philanthropic organizations will result in stronger nonprofit organizations.
- **Take the initiative:** Don't wait for nonprofit organizations to request assistance; make phone calls and offer support. Verify tax-exempt status via the IRS **Tax Exempt Organization Search (formerly Select Check)** tool and use other supplemental tools/organizations available such as **GuideStar Charity Check** and **Charity Navigator**.
- **Short-term and long-term assistance:** Provide medium- and long-term funding based on the needs of the affected communities.
- **Expand funding from mission:** Be aware of the extraordinary situations that arise following disasters and look for opportunities to fund outside the foundation's typical funding focus.

Grants to Individuals

Similar to public charities, private foundations can make need-based contributions to victims of disasters or to other persons who are poor and/or distressed. A program to award grants to aid individuals who lack resources to satisfy their basic human needs are not required to be preapproved by the IRS. The criteria for

awarding such grants for food, shelter, and medical care should be designed to award funds only to those who are indeed qualified for charitable assistance or persons referred to as members of a charitable class.

IRS rules state that the group of individuals who may properly receive assistance from a tax-exempt charitable organization is called a “charitable class.” A charitable class must be large enough or sufficiently indefinite that the community as a whole, rather than a pre-selected group of people, benefits when a charity provides assistance. For example, a charitable class could consist of all the individuals in a city, county or state. This charitable class is large enough that the potential beneficiaries cannot be individually identified and providing benefits to this group would benefit the entire community.

Declaration of National Emergency and Tax-Favored Assistance to Employees

Private foundations, as employers of their own staff, may now provide assistance within the guidelines of Internal Revenue Code (IRC) §139, whether in cash or services, to its employees affected by COVID-19 and that assistance shall be treated as tax-free to the recipients, exempt from federal income and employment taxes. In addition, because there are no mandatory administrative requirements under this provision – and it does not require itemized receipts from employees – employers can react promptly to provide financial support and help alleviate the immediate needs of its employees.

For more information on that assistance please see our Firm’s detailed article entitled:

[National Emergency Declaration: Permits Employers to Provide Tax-Free Financial Assistance to Employees.](#)

Declaration of National Emergency and Employer-Sponsored Private Foundations

Many companies throughout America have “Employee Emergency Assistance Funds” or “Emergency Funds” that they have established over the years either as 501(c)(3) public charities or as 501(c)(3) private foundations.

Traditionally, if an emergency fund is set up as a public charity it is able to provide financial hardship and/or emergency disaster relief directly to its employees in the event of an unexpected disaster as a result of it being funded primarily by a broad base of employee rather than by employer contributions. Payments received from emergency funds formed as public charities are presumed to be made for charitable purposes and do not result in taxable compensation to the employees. If, however, an Employer-Funded Emergency Fund is set up as a private foundation, because most of the funds have been contributed by the employer, it generally could not provide assistance back to the employees of the sponsoring employer without resulting in a self-dealing transaction.

As a result of the Declaration, employer-sponsored and funded private foundations may now provide qualified disaster relief payments in the same manner that Emergency Funds formed as public charities as long as it follows certain procedures. Qualified disaster relief payments made by a private foundation can avoid self-dealing ramifications or need for pre-approval from the IRS as long as the assistance is provided to a charitable class of beneficiaries which are selected by an independent selection committee made up of persons who are not in a position to exercise influence over the affairs of the sponsoring employer.

Recordkeeping

As with other types of grants, a private foundation should maintain adequate records such as the method of selection of recipients, type of assistance provided, how the grant relates to the private foundation’s mission, and the like. Required documentation depends on whether assistance is long-term or short-term. (Short-term grants require far less documentation.) Please refer to our aforementioned in-depth article on tax-favored assistance to employees as it pertains to documentation for that type of assistance.

Reporting Requirements

If a private foundation chooses to fund disaster relief programs as one of its four largest programs, it must describe the services provided in its summary of direct charitable activities on Form 990-PF.

Contact Us and Resources

Last week on our website, we launched the [PKFOD COVID-19 Resource Center](#), which provides clients information to help them make fact-based decisions.

If you have any questions on the topics discussed in this bulletin as they pertain to private foundations, please do not hesitate to reach out to one of the partners in our private foundation practice below.

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